IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LBF TRAVEL, INC., Plaintiff, v. FAREPORTAL, INC. and WK TRAVEL, INC. Defendants.	**SECOND AMENDED COMPLAINT** Case No. 13 Civ. 9143 (LAK) (GWG) TRIAL BY JURY DEMANDED

LBF Travel, Inc. ("LBF Travel"), by their counsel, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, brings this Second Amended Complaint against Fareportal, Inc. ("Fareportal") and WK Travel, Inc. ("WK Travel") (collectively, "Defendants") alleging the following:

NATURE OF ACTION

1. This is an action to recover for Defendants' willful acts of: (a) trademark infringement, unfair competition, and false designation of origin under 15 U.S.C. §§ 1051 *et seq.* (the Lanham Act); (b) trademark infringement and unfair competition in violation of New York State common law; (c) trademark dilution and injury to business reputation under New York. General Business Law ("NY GBL") § 360-1; (d) trade name infringement under NY GBL § 1 33; (e) unfair and deceptive trade practices under NY GBL § 349; (f) false advertising under NY GBL., § 350; (g) unfair business practice under New York State common law; and (h) unjust enrichment under New York State common law.

2. LBF Travel is an online discount travel services business that owns and operates several prominent and well-known online travel companies, which offer discount travel products to online customers through websites www.smartfares.com and www.travelation.com.

3. Upon information and belief, Defendants are affiliated companies under common ownership and/or control that operate competing online travel websites www.cheapoair.com, www.onetravel.com, www.cheapostay.com, www.farebuzz.com and www.insanelycheapflights.com. Defendants are direct competitors of LBF Travel in the market of online travel services.

4. Defendants have attempted to develop and enhance their consumer base by infringing on Plaintiff's trademarks and trade name, and otherwise engaging in unfair competition in violation of federal and New York law, to the significant injury of Plaintiff and the New York consumer public.

5. Defendants, with full knowledge of Plaintiff's existence and their rights in the federally-registered TRAVELATION trademark and their www.smartfares.com trade name and brand, to which New York common law protection attaches, have made infringing use of Plaintiff's trademarks and trade names in a manner that is likely to cause consumer confusion and dilute and tarnish Plaintiff's trademarks and trade names.

6. Specifically, Defendants have improperly infringed upon and diluted Plaintiff's trademarks by purchasing Plaintiff's trademarks as keywords from Google and other search engines (activity known as "search engine marketing" or "SEM"), so that when an internet user searches for "Travelation" or "smartfares" on Google or another search engine, advertisement hyperlink for one of the websites of the Defendants, LBF Travel's Competitors, will appear on the first page of the search results. This enables Defendants to use the TRAVELATION trade mark and the www.smartfares.com trade name to place their advertising hyperlinks in front of consumers who specifically search for TRAVELATION or "smartfares," thereby diverting a percentage of such Internet users from LBF Travel and enjoying and benefitting from all the

goodwill and "buyer's momentum" associated with Plaintiff's valuable trademark and trade name, but at a fraction of the cost.

7. Defendants thereby profit financially from infringing upon and diluting Plaintiff's protected trademarks.

8. Furthermore, Defendants have engaged in false advertising and other consumer protection violations, by advertising misleading percentage-off sales without disclosure of basis for comparison, advertising limited-time "sales" when such savings were in fact available on an ongoing basis, and otherwise creating an impression for consumers that Defendants offer significantly better prices, and encouraging consumers to not comparison-shop. Such activities have caused harm to the consumer public in general, as consumers have been misled as to the cost/value of the travel services provided by Defendants. Defendants' conduct has further caused damages to LBF Travel, who is forced to compete with overstated discounts and non-existent savings that Defendants claim to offer in order to not lose its price-sensitive customers to Defendants' unfair competition practices.

CEASE AND DESIST LETTER

9. Prior to initiating this action, Plaintiff attempted to resolve the matter of trademark and trade name infringement out of court by sending a cease and desist letter to the Defendants.

10. The cease and desist letter included, among other things, the allegations set forth in this Complaint.

11. The cease and desist letter was sent to the Defendants' legal counsel via electronic mail on October 28, 2013. A true and correct copy of the October 28, 2013 cease and desist letter is annexed hereto as **Exhibit A.**

12. Defendants' legal counsel acknowledged receipt of the October 28, 2013 cease and desist letter in the email correspondence dated October 30, 2013, and claimed that Defendants were "not engaging in any infringing activity with respect to LBF's trademarks." A true and correct copy of the Defendants' counsel's October 30, 2013 letter is annexed hereto as **Exhibit B.**

10. Despite Defendants' counsel's October 30, 2013 acknowledgment and assurances, Defendants continued the same infringing activity with respect to Plaintiff's trademarks that the cease and desist letter sought to prevent.

THE PARTIES

11. Plaintiff LBF Travel is a Delaware corporation with a place of business at 4545 Murphy Canyon Road, Suite 210 San Diego, CA 92123.

12. Defendant Fareportal is a New York corporation with a place of business at 213 West 35th Street, Suite 1201, New York, New York 10001

13. Defendant WK Travel is a Nevada corporation with a place of business at 213 West 35th Street, Suite 1201, New York, New York 10001.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction of this action on the following basis:

(i) Under 15 U.S.C. §1121(actions arising under 15 U.S.C., Chapter 22 – Trademarks) since this action involves questions arising under the Lanham Act §43(a), 15 U.S.C. §1114, §1064, *et seq.;*

(ii) Under 28 U.S.C. § 1331 (federal question) since this action arises under the Lanham Act §43(a), 15 U.S.C. §1114 *et seq*.;

(iii) Under 28 U.S.C. §1332 (diversity of citizenship) since Plaintiff and Defendants are corporate citizens of different states;

(iv) Under 28 U.S.C. §1338 (acts of Congress relating to trademarks) since this action arises under the Lanham Act §43(a), 15 U.S.C. §1114 *et seq.*; and,

(v) Under 28 U.S.C. § 1367 (supplemental jurisdiction).

16. Venue is proper in this District pursuant to 28 U.S.C. §1391 (b) and (c), because a substantial part of the harm sought to be avoided, and a substantial part of the events and omissions giving rise to the claims asserted herein, occurred within this District.

FACTUAL BACKGROUND

I. Plaintiff's Business and Trademark Holdings

17. Plaintiff LBF Travel is an online discount travel services business that owns travel brands SMARTFARES and TRAVELATION ("LBF's Marks"), and operates websites under those brands under the Uniform Resource Locator ("URL") **http://www.smartfares.com** and **http://www.travelation.com**, respectively.

18. Through great expense and care, LBF Travel has become well known and famous in its market and has acquired a reputation for excellence and outstanding service to customers. As a result, LBF Travel's reputation, and the goodwill associated with LBF's Marks are very valuable business assets, which LBF Travel vigorously protects.

18. Since at least 2010, LBF Travel has used SMARTFARES, and operated the website located at the URL **http://www.smartfares.com**; the website has been active in commerce since at least 2007. On November 21, 2013, LBF Travel filed an application, serial number 86-125,535, to register SMARTFARES with the United States Patent and Trademark Office ("USPTO"). The application was granted on or about July 8, 2014 when federal registration number 4,563,664 was issued. SMARTFARES is a leading online source of discounted leisure and business travel products. Through the SMARTFARES

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website, LBF Travel provides travel information to consumers and allows consumers to book plane tickets, hotel accommodations, rental cars, cruises and vacations.

19. Since at least 2010, LBF Travel has used TRAVELATION and operated the related website **http://www.travelation.com;** the website has been active in commerce since at least 2005. Since 2008 there has been a federal registration number 77,263,149 for TRAVELATION, which is owned by LBF Travel. TRAVELATION is a leading online source of discounted leisure and business travel products. Through the TRAVELATION website, LBF Travel provides travel information to consumers and allows consumers to book plane tickets, hotel accommodations, rental cars, cruises and vacations.

20. Plaintiff has used LBF's Marks in connection with, *inter alia*, providing air travel bookings, hotel reservations and booking services for car rentals, packages and insurance, continuously since the dates listed above and far prior to the acts of Defendants complained of herein.

21. Because of the nature of LBF Travel's services, which are primarily online discount travel services, the vast majority of potential customers of LBF Travel come to LBF Travel's websites via the Internet to do business and search for travel services.

22. LBF Travel conducts a substantial amount of its business over the Internet, receiving thousands of visitors to its websites each month. LBF Travel advertises over the Internet, including advertising at Google and other search engines.

23. LBF's Marks have become distinctive and famous and serve to distinguish LBF Travel's reputation, goods and services from its competition. As a result of extensive use and promotion by Plaintiff of LBF's Marks, Plaintiff owns the valuable goodwill that is symbolized by them. LBF's Marks have come to be associated in the minds of consumers throughout the

country with Plaintiff's services, and the use of LBF's Marks, key parts thereof and close variations thereof substantially increases the marketability of travel, reservation, and booking services rendered by Plaintiff through its www.smartfares.com and www.travelation.com websites. Part of the benefit of this notoriety is that potential customers will search specifically for LBF's Marks through a variety of Internet search engines, including Google.

II. Defendants' Business Operations

24. Upon information and belief, Defendants are affiliated companies with common ownership and/or management.

25. Upon information and belief, Fareportal owns a portfolio of travel brands, including CheapOair and CheapOstay, and operates websites under those brands from the URL http://www.cheapOair.com and http//www.cheapOstay.com, respectively. CheapOair offers discounted airfare, airline tickets, and vacation packages to online consumers. CheapOstay offers discounted hotel accommodations to consumers.

26. Upon information and belief, Fareportal owns the following federally-registered trademarks:

Mark	Reg. No.	Good And Services
CHEAPOAIR [1]	3,576,166	(a) Advertising services for travel services, namely, promoting the goods, services, brand identity and commercial information and news of travel and travel related companies on the Internet; (b) Providing an on-line computer database in the field of travel information services; travel and tour information service; travel and tour ticket reservation service; travel services, namely, providing fare and rate information for transportation bookings and reservations for flights, car rentals, cruises, rail travel, and tours via computer; providing travel information and news via computer; providing links to websites of others featuring travel;

[1] A copy of the Certificate of U.S. Trademark Registration No. 3,576,166 for mark CHEAPOAIR is annexed hereto as **Exhibit C.**

		(c) Providing travel lodging information services and travel lodging booking agency services for travelers.
CheapOstay[2]	3,672,700	(a) Advertising and marketing services, namely, promoting the goods and services of others; (b) Providing an on-line computer database in the field of travel information services; Providing links to web sites of others featuring travel; Provision of travel information; Travel and tour information service; Travel and tour ticket reservation service; (c) Making hotel reservations for others; Providing travel lodging information services and travel lodging booking agency services for travelers.
CHEAPOAIR.COM THE ONLY WAY TO GO!![3]	3,580,258	Providing links to web sites of others featuring travel; Travel and tour information service; Travel and tour ticket reservation service.
CHEAPOAIR.COM THE ONLY WAY TO GO!! (stylized mark)[4]	3,553,213	Providing links to web sites of others featuring travel; Travel and tour information service; Travel and tour ticket reservation service.

27. The terms CHEAPOAIR and CHEAPOSTAY are compound terms.

28. The term CHEAPOAIR is a compound term consisting of the words "CHEAP" and "AIR" with the letter "O" juxtaposed between them.

29. The term CHEAPOSTAY is a compound term consisting of the words "CHEAP" and "STAY" with the letter "O" juxtaposed between them.

30. Online dictionary www.dictionary.com provides the following definitions, among others, for the term "CHEAP":

> 1. costing very little; relatively low in price; inexpensive: *a cheap dress.*
> 2. costing little labor or trouble: *Words are cheap.*
> 3. charging low prices: *a very cheap store.*

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[2] A copy of the Certificate of U.S. Trademark Registration No. 3,672,700 for mark CHEAPOSTAY is annexed hereto as **Exhibit D.**

[3] A copy of the Certificate of U.S. Trademark Registration No. 3,580,258 for mark CHEAPOAIR.COM THE ONLY WAY TO GO!!is annexed hereto as **Exhibit E.**

[4] A copy of the Certificate of U.S. Trademark Registration No. 3,553,213 for mark CHEAPOAIR.COM THE ONLY WAY TO GO!! (stylized mark) is annexed hereto as **Exhibit F.**

> 4. of little account; of small value; mean; shoddy: *cheap conduct; cheap workmanship.*
> 5. embarrassed; sheepish: *He felt cheap about his mistake.*

31. Similarly, www.dictionary.com provides the following definitions, among others, of the term "AIR":

> 1. a mixture of nitrogen, oxygen, and minute amounts of other gases that surrounds the earth and forms its atmosphere.
> 2. a stir in the atmosphere; a light breeze.
> 3. overhead space; sky: *The planes filled the air.*
> 4. circulation; publication; publicity: *to give air to one's theories.*
> 5. the general character or complexion of anything; appearance: *His early work had an air of freshness and originality.*

32. The combination of the words "CHEAP" and "AIR" with the letter "O" juxtaposed between them to form the compound term CHEAPOAIR does nothing to change the meaning of the individual words CHEAP and AIR.

33. Thus, the term CHEAPOAIR is descriptive, if not generic, for the services in connection with which it is being used, i.e., "Advertising services for travel services, namely, promoting the goods, services, brand identity and commercial information and news of travel and travel related companies on the Internet;" "Providing an on-line computer database in the field of travel information services; travel and tour information service; travel and tour ticket reservation service; travel services, namely, providing fare and rate information for transportation bookings and reservations for flights, car rentals, cruises, rail travel, and tours via computer; providing travel information and news via computer; providing links to websites of others featuring travel;" and "Providing travel lodging information services and travel lodging booking agency services for travelers."

34. Likewise, www.dictionary.com provides the following definitions, among others, for the term "STAY":

1. to spend some time in a place, in a situation, with a person or group, etc.: *He stayed in the army for ten years.*
2. to continue to be as specified, as to condition or state: *to stay clean.*
3. to hold out or endure, as in a contest or task (followed by *with* or *at*): *Please stay with the project as long as you can.*
4. to keep up, as with a competitor (followed by *with*).
5. *Poker.* to continue in a hand by matching an ante, bet, or raise.
6. to stop or halt.
7. to pause or wait, as for a moment, before proceeding or continuing; linger or tarry.
8. *Archaic.* to cease or desist.
9. *Archaic.* to stand firm.
10. to stop or halt.
11. to hold back, detain, or restrain, as from going further.
12. to suspend or delay (actions, proceedings, etc.).
13. to appease or satisfy temporarily the cravings of (the stomach, appetite, etc.).
14. to remain through or during (a period of time): *We stayed two days in San Francisco.*

35. The combination of the words "CHEAP" and "STAY" with the letter "O" juxtaposed between them to form the compound term CHEAPOSTAY does nothing to change the meaning of the individual words CHEAP and STAY.

36. Thus, the term CHEAPOSTAY is descriptive, if not generic, for the services in connection with which it is being used, i.e. "Advertising and marketing services, namely, promoting the goods and services of others;" "Providing an on-line computer database in the field of travel information services; Providing links to web sites of others featuring travel; Provision of travel information; Travel and tour information service; Travel and tour ticket reservation service;" and "Making hotel reservations for others; Providing travel lodging information services and travel lodging booking agency services for travelers."

37. Upon information and belief, WK Travel uses the ONETRAVEL mark and operates the website located at the URL http://www.onetravel.com. Onetravel.com offers discounted airfare, airline tickets, and vacation packages to online consumers.

38. Upon information and belief, Defendants use the INSANELYCHEAPFLIGHTS mark and operate the website located at the URL http://www.insanelycheapflights.com. InsanelyCheapFlights.com offers discounted airfare, accommodations, car rental, and vacation packages to online consumers.

39. Upon information and belief, Defendants use the FAREBUZZ mark and operate the website located at the URL http://www.farebuzz.com. Farebuzz.com offers discounted airfare, accommodations, car rental, and vacation packages to online consumers.

40. Upon information and belief, Defendants own several brands for which they have applications pending for federal registration before the USPTO, and which they use to offer travel services to online consumers:

Mark	Filing No.	Good And Services
CHEAPOAIR.COM	85566395	(a) Advertising services for travel services, namely, promoting the goods, services, brand identity and commercial information and news of travel and travel related companies on the Internet; (b) Providing an on-line computer database in the field of travel information services; travel and tour information service; travel and tour ticket reservation service; travel services, namely, providing fare and rate information for transportation bookings and reservations for flights, car rentals, cruises, rail travel, and tours via computer; and providing travel information and news via computer; (c) Providing travel lodging information services and travel lodging booking agency services for travelers.
www.cheapOair.com	85564451	(a) Providing an on-line computer database in the field of travel information services; travel and tour information service; travel and tour ticket reservation service; travel services, namely, providing fare and rate information for transportation bookings and reservations for flights, car rentals, cruises, rail travel, and tours via computer; and providing travel information and news via computer; (b) Providing travel lodging information services and travel lodging booking agency services for travelers.

ONETRAVEL	85,620,094	Providing an on-line computer database in the field of travel information services; travel and tour information services; travel and tour ticket reservation services; travel services, namely, providing fare and rate information for transportation bookings and reservations for flights, car rentals, cruises, rail travel, and tours via computer; providing travel information and news via computer.

41. Defendants are direct competitors of Plaintiff in the area of online travel services, offering similar travel products through similar means to the business- and leisure-traveling public.

42. Defendants have used LBF's Marks to increase the marketability of Defendants' own travel, reservation, and booking services through the purchase of LBF's Marks as advertising keywords from search engines (as explained below), in order to wrongfully suggest to the consumer public that their services are affiliated with, sponsored by, authorized by, or provided by Plaintiff for the purpose of misleading consumers into purchasing Defendants' services rather than Plaintiff's services.

III. Facts Common to All Claims for Relief

A. Background on Federal and Common Law Trademark Infringement in Search Engine Marketing

43. Internet users have two primary ways of attempting to find the website for a particular company. First, a user may guess that the website of a particular company will use the company's name or trademark as a "domain name" (the website's digital location on the Internet); and type in that domain name into an Internet browser, which would then display the contents of the company's website. The second option an Internet user has to find the website of the company he or she is looking for is to type in that company's name or known trademarks into an Internet search engine, of which Google is one.

44. Google offers a program called "AdWords" which allows advertisers to bid for their advertising hyperlinks to appear in response to particular search terms input by Internet users (hereafter, "Keywords"). The advertising hyperlinks, called "sponsored links", appear either to the right of the search results, or immediately above the search results. A sponsored link is a hyperlink, which contains the text of the advertiser's ad, and allows the Internet user to use their mouse to "click" on the link, which brings the Internet user directly to the advertiser's commercial website. The advertisers pay defendant Google based upon the number of "clicks" on these sponsored links. Advertisers bid for placement of their advertisements for each possible variation of a Keyword, as there is limited space on defendant Google's search results page.

45. The so-called "sponsored links" do not always clearly identify themselves as advertisements, and Google's layout of the ads does not conspicuously identify them as such. This is particularly true of the sponsored links which appear at the top of the search results. These ads at the top of the search results are designed by Google to look like part of the "non-sponsored" search results, and by virtue of the fact that they appear at the top of the list of Search Results, Internet users may infer that they are the most relevant websites on the Search Results page.

46. Other search engines also offer online advertising programs associated with specific words or phrases, commonly referred to as Search Engine Marketing ("SEM"). Through SEM, an advertiser's advertisements will appear among the sponsored search engine results when an Internet user inputs a specific keyword in a search engine's search bar. Generally, the search engine will award the first sponsored result to the advertiser that has placed the highest bid on the keyword, i.e. the advertiser that has agreed to pay to the search engine operator the highest amount each time an independent internet user takes a particular action (such as

searching a term or clicking on a link in the advertisement). Google AdWords, Yahoo! Search Marketing, and Microsoft (Bing) AdCenter are currently the most popular SEM programs in the United States.

47. LBF's Marks are often-searched terms on the Internet. As part of LBF Travel's advertising strategy, LBF Travel submits to Google and some other search engines LBF's Marks as Keywords, both alone and in combination with other words. Whenever an Internet user searched on Google or another search engine for "travelation" or "smartfares", one of LBF Travel's Sponsored Links will appear either immediately above or to the immediate right hand side of the Search Results. If the Internet user clicks on this link, the user will be brought to one of LBF Travel's websites.

48. Defendants also advertise their competing services on the Internet, through Google AdWords program and other search engine advertising programs. Upon information and belief, Defendants have submitted LBF's Marks as Keywords to Google and other search engines, either alone, or in conjunction with other words, such that when an Internet user searches on Google.com or other search engines for "SMARTFARES" or "TRAVELATION," Defendants' competing sponsored links appear prominently either to the immediate right or on top of the Search Results page.

49. Defendants systematically use LBF's Marks and close variations thereof in their SEM campaigns for the CheapOair, CheapOstay, Onetravel, Farebuzz and InsanelyCheapFlights brands. Upon information and belief, Defendants purchase advertising using LBF's Marks as Keywords for the specific purpose of intercepting consumers and customers of LBF Travel and those who are specifically looking for TRAVELATION and SMARTFARES and diverting them to Defendants, LBF Travel's competitors.

50. Upon information and belief, Defendants use LBF's Marks for several improper purposes, including (1) diverting potential customers, who are actively looking for LBF Travel or LBF's Marks, to Defendant's websites; (2) taking advantage of and trading upon and receiving the benefits of the goodwill and good reputation associated with the LBF Travel's name and LBF's Marks, which LBF Travel has developed at great expense; (3) giving Defendants' goods and services appeal, credibility and marketability by association with the LBF Travel's name and LBF's Marks; (4) falsely indicating to potential customers that Defendants are sponsored, endorsed, affiliated with or approved by LBF Travel; (4) falsely implying that Defendants' services are as good as, or a credible substitute for, those goods and services offered by LBF Travel; (5) hijacking LBF's Marks by diverting the good-will associated with LBF's Marks to Defendants' own benefit, without authorization or compensation to LBF Travel; (6) forcing LBF Travel to make higher bids for its own LBF's Marks as Keywords so that LBF Travel's sponsored links appear on searches for "TRAVELATION" and "SMARTFARES", all to Defendants' profit.

51. Defendants' use of the LBF's Marks via search engine advertising programs causes confusion in the marketplace that Defendants' goods and services are affiliated with or otherwise approved or “sponsored” by LBF Travel; causes LBF's Marks to be diluted by losing their distinctive quality of being associated solely with LBF Travel; allows Defendants to financially benefit from and to trade off of the goodwill and reputation of LBF Travel without incurring an expense similar to that incurred by Plaintiff in building up its brand name; and causes LBF Travel to lose, in part, control over the commercial use of its own name and LBF's Marks by placing such control in the hands of Defendants.

52. When an Internet user searching on a search engine for LBF's Marks is presented with a search results page which contains multiple sponsored links, one of which may be for LBF Travel's websites, and others for Defendants' competing websites. Internet users may click on one of the sponsored links for Defendants' websites, believing that it is related to, or sponsored by LBF Travel. Even if the Internet user realizes that the website they have been taken to is not LBF Travel's website, a percentage of such Internet users may either stay at the Defendant's websites, or may otherwise discontinue their search for LBF's Marks. An Internet user may associate the quality of goods and services offered on Defendant's website with those offered by LBF Travel, and if dissatisfied with such goods or services, may discontinue their search for such services entirely.

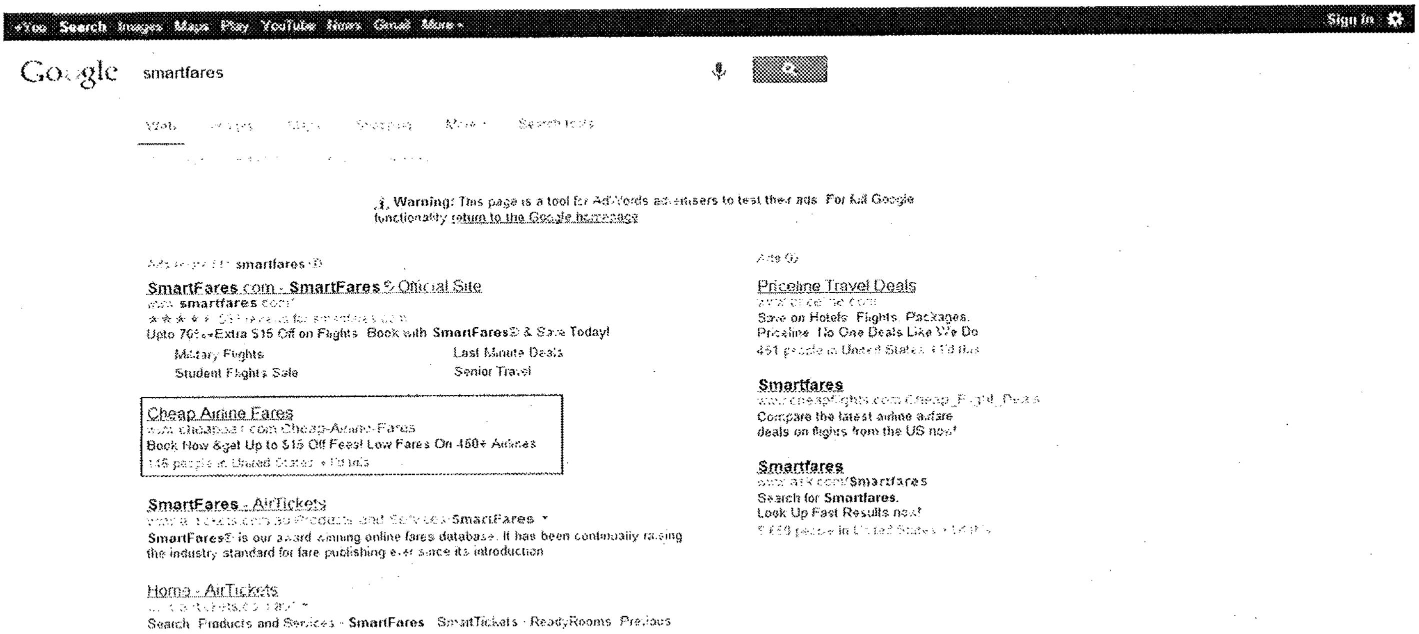
B. Acts of Federal and Common Law Trademark Infringement

53. Defendants' purchase of or bidding on LBF's Marks as part of their SEM campaigns constitutes unauthorized use of LBF's Marks in commerce, that is clearly intended to cause consumer confusion about the source of Defendants' services and/or the relationship or affiliation between these Defendants and Plaintiff, and which serves to benefit Defendants financially.

54. These unauthorized uses of LBF's Marks are prohibited by federal trademark and unfair competition law, New York State trademark and unfair competition law, and common law.

55. As of the date of this Second Amended Complaint, Defendants continue to use LBF's Marks and close variations thereof in their respective online advertisements, as detailed below.

56. Beginning in at least June 2013, LBF Travel included the SMARTFARES, Plaintiff's mark protected by common law, within its keyword advertisements, as illustrated by the following advertisement:



Search Images Maps Play YouTube News Gmail More
Sign in
smartfares
Warning: This page is a tool for AdWords advertisers to test their ads. For full Google functionality return to the Google homepage
smartfares
SmartFares.com - SmartFares® Official Site
Upto 70% +Extra $15 Off on Flights. Book with SmartFares® & Save Today!
Military Flights
Last Minute Deals
Student Flights Sale
Senior Travel
Cheap Airline Fares
Book Now &get Up to $15 Off Fees! Low Fares On 450+ Airlines
SmartFares - AirTickets
SmartFares® is our award winning online fares database. It has been continually raising the industry standard for fare publishing ever since its introduction
Home - AirTickets
Search Products and Services SmartFares SmartTickets ReadyRooms Previous
Priceline Travel Deals
Save on Hotels Flights Packages.
Priceline. No One Deals Like We Do
Smartfares
Compare the latest airline airfare deals on flights from the US now!
Smartfares
Search for Smartfares.
Look Up Fast Results now!

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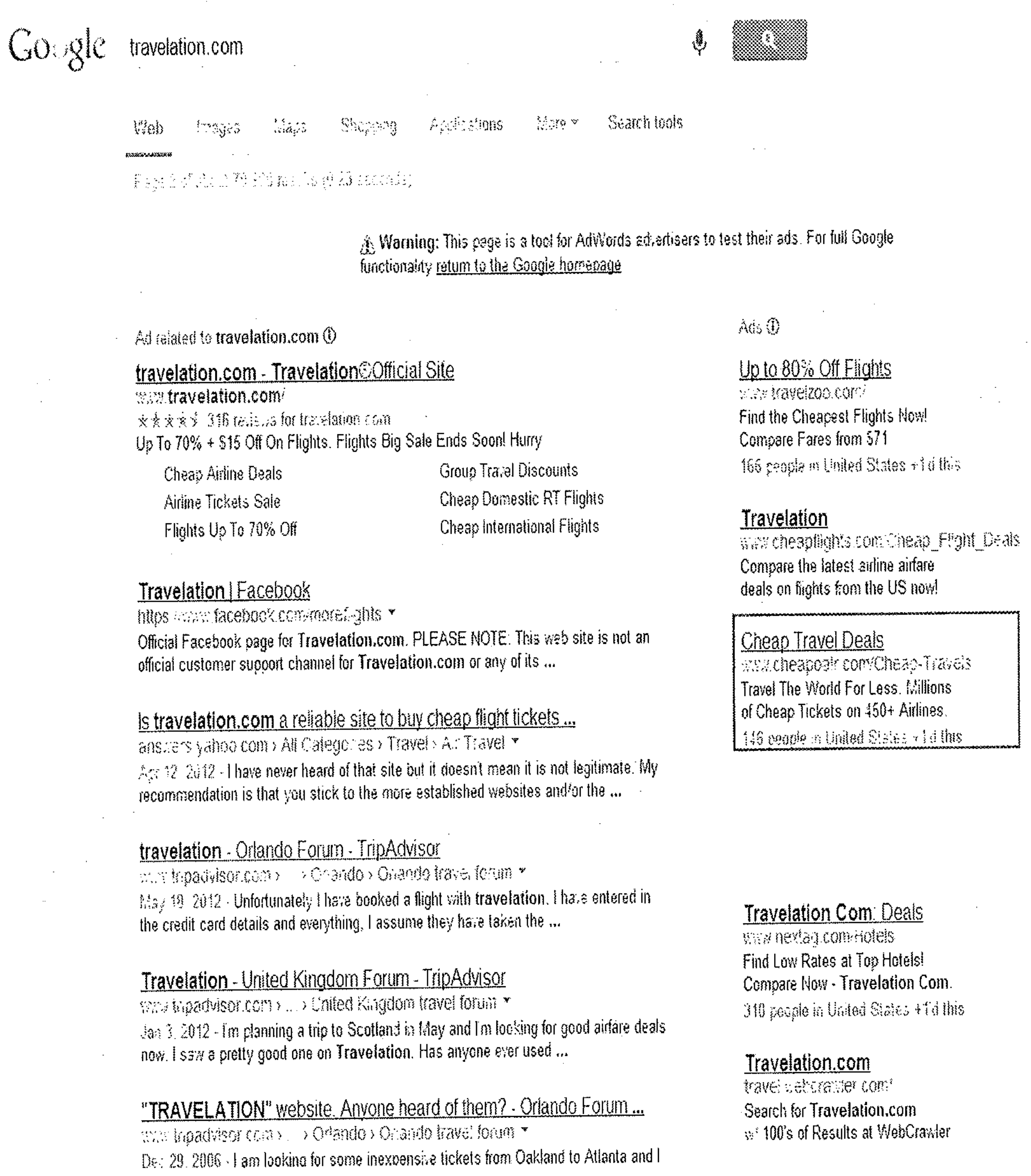
57. Similarly, a Google search for the website "travelation.com," featuring in its name Plaintiff's federally-registered mark TRAVELATION, caused the following SERP to be displayed:


Google
travelation.com
Web
Search tools
Warning: This page is a tool for AdWords advertisers to test their ads. For full Google functionality return to the Google homepage
Ad related to travelation.com
travelation.com - Travelation©Official Site
travelation.com/
Up To 70% + $15 Off On Flights. Flights Big Sale Ends Soon! Hurry
Cheap Airline Deals
Group Travel Discounts
Airline Tickets Sale
Cheap Domestic RT Flights
Flights Up To 70% Off
Cheap International Flights
Travelation | Facebook
Official Facebook page for Travelation.com. PLEASE NOTE: This web site is not an official customer support channel for Travelation.com or any of its ...
Is travelation.com a reliable site to buy cheap flight tickets ...
Apr 12, 2012 - I have never heard of that site but it doesn't mean it is not legitimate. My recommendation is that you stick to the more established websites and/or the ...
travelation - Orlando Forum - TripAdvisor
May 19, 2012 - Unfortunately I have booked a flight with travelation. I have entered in the credit card details and everything, I assume they have taken the ...
Travelation - United Kingdom Forum - TripAdvisor
Jan 3, 2012 - Im planning a trip to Scotland in May and Im looking for good airfare deals now. I saw a pretty good one on Travelation. Has anyone ever used ...
"TRAVELATION" website. Anyone heard of them? - Orlando Forum ...
Dec 29, 2006 - I am looking for some inexpensive tickets from Oakland to Atlanta and I
Ads
Up to 80% Off Flights
Find the Cheapest Flights Now!
Compare Fares from $71
Travelation
Compare the latest airline airfare deals on flights from the US now!
Cheap Travel Deals
Travel The World For Less. Millions of Cheap Tickets on 450+ Airlines.
Travelation Com: Deals
Find Low Rates at Top Hotels! Compare Now - Travelation Com.
Travelation.com
Search for Travelation.com
100's of Results at WebCrawler

58. In fact, Defendants' infringement on other companies' trademarks is pervasive, as Defendants are not only targeting LBF's Marks and brands in their search engine bidding activity. In fact, they are engaged in an intentional, willful, widespread and systematic campaign

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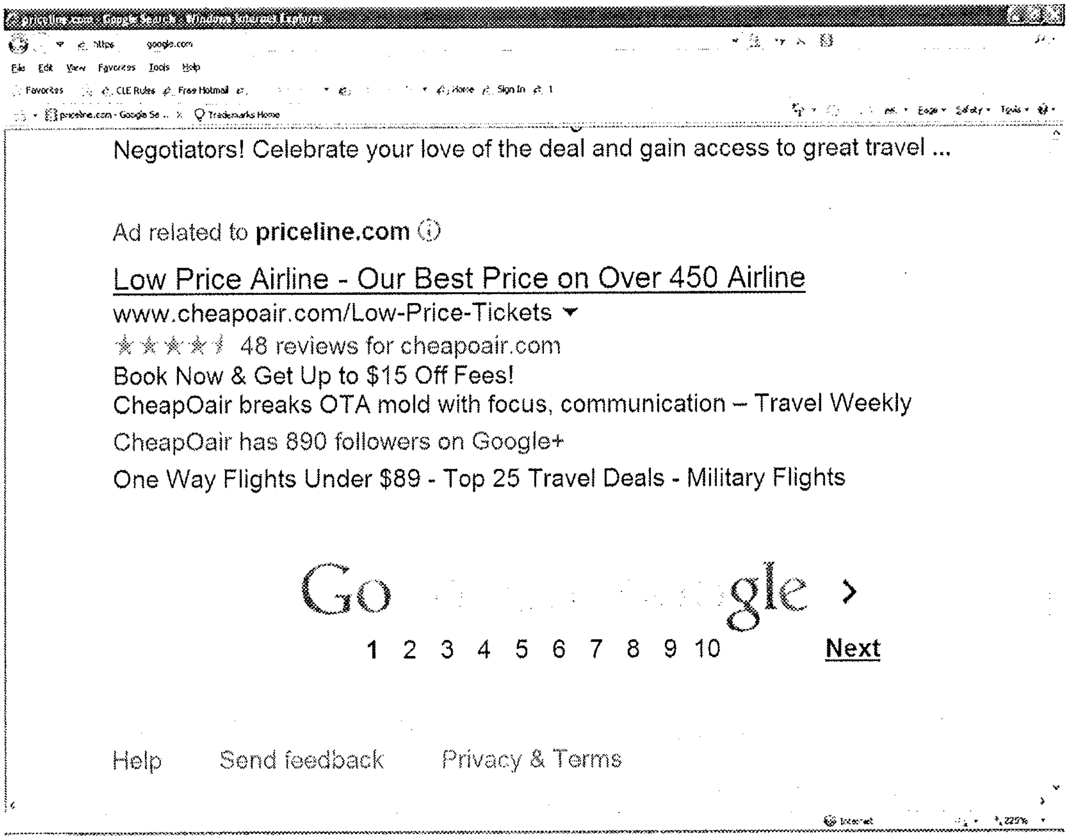
of bidding on trademarks and brands of other online travel companies, including but not limited to www.priceline.com, www.hotwire.com, www.cheapflights.com and www.travelocity.com, as part of Defendants' SEM strategy.

59. For example, a Google search for "priceline.com," a federally-registered trademark of priceline.com Incorporated, U.S. Trademark Registration Nos. 4364773, 4111968, 4111958, 2481112, caused the following sponsored search results to be displayed:


Negotiators! Celebrate your love of the deal and gain access to great travel ...
Ad related to priceline.com
Low Price Airline - Our Best Price on Over 450 Airline
www.cheapoair.com/Low-Price-Tickets
48 reviews for cheapoair.com
Book Now & Get Up to $15 Off Fees!
CheapOair breaks OTA mold with focus, communication – Travel Weekly
CheapOair has 890 followers on Google+
One Way Flights Under $89 - Top 25 Travel Deals - Military Flights
1 2 3 4 5 6 7 8 9 10
Next
Help
Send feedback
Privacy & Terms

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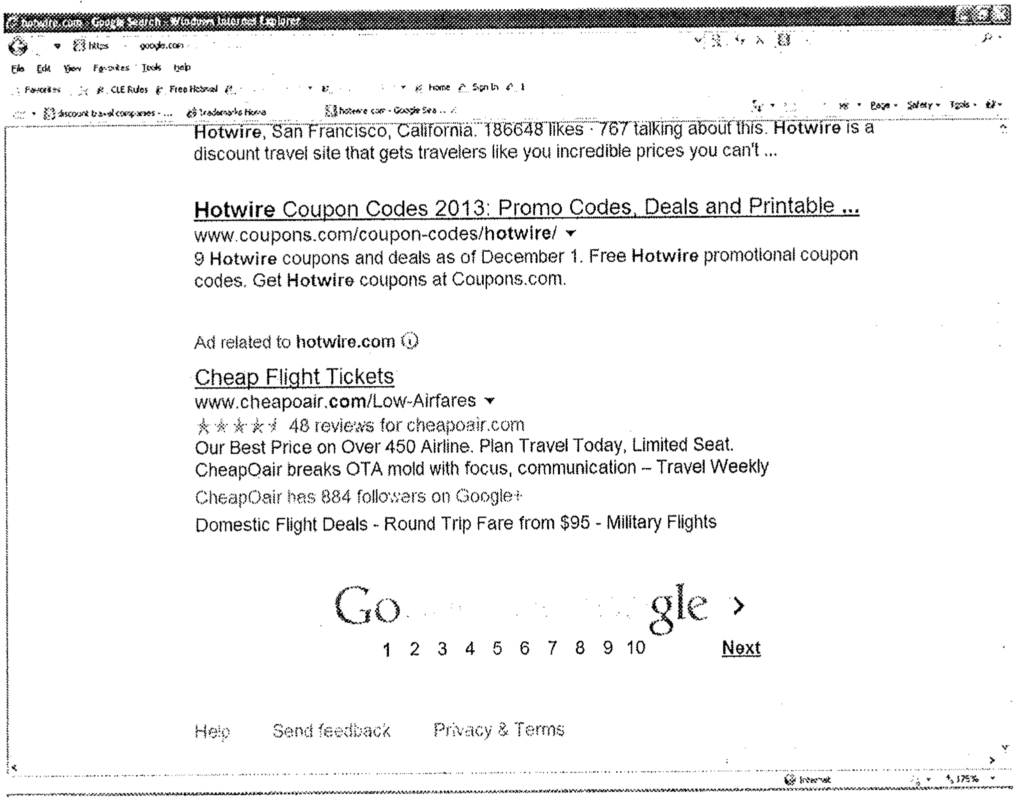
60. A Google search for "hotwire.com," federally-registered trademark of Hotwire, Inc., U.S. Trademark Registration Nos. 3428658 and 3387685, caused the following sponsored search results to be displayed:


Hotwire, San Francisco, California. 186648 likes · 767 talking about this. Hotwire is a discount travel site that gets travelers like you incredible prices you can't ...
Hotwire Coupon Codes 2013: Promo Codes, Deals and Printable ...
www.coupons.com/coupon-codes/hotwire/
9 Hotwire coupons and deals as of December 1. Free Hotwire promotional coupon codes. Get Hotwire coupons at Coupons.com.
Ad related to hotwire.com
Cheap Flight Tickets
www.cheapoair.com/Low-Airfares
48 reviews for cheapoair.com
Our Best Price on Over 450 Airline. Plan Travel Today, Limited Seat.
CheapOair breaks OTA mold with focus, communication – Travel Weekly
CheapOair has 884 followers on Google+
Domestic Flight Deals - Round Trip Fare from $95 - Military Flights
1 2 3 4 5 6 7 8 9 10
Next
Help
Send feedback
Privacy & Terms

61. Defendants' Keyword advertisements and uses of LBF's Marks and close variations thereof detailed above are not advertisements for Plaintiff's services and were made without Plaintiff's permission. These actions threaten to impair the distinctiveness of LBF's Marks and to tarnish them by association with Defendants' services, thereby diluting LBF's Marks.

IV. Violations of Consumer Protection Statutes

62. As described above, Defendants have engaged in numerous acts that violate federal and New York trademark and unfair competition laws, including purchasing LBF's

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Marks as advertising keywords, all of which have unjustly enriched Defendants at significant damage to Plaintiff as well as the consumer public in New York.

63. Defendants have not only profited from their wrongful acts, they have injured the New York consumer public both by intentionally creating confusion as to the source of their services and the existence of an affiliation with Plaintiffs and by advertising nonexistent deals and misleading prices.

64. By using LBF's Marks in Defendants' search engine marketing, Defendants have or could have caused New York consumers to believe that they were purchasing services through Plaintiff or a company associated with Plaintiff.

65. Plaintiff has an excellent reputation in the web-based travel industry and, as such, consumers choose to use Plaintiff's services, knowing they will receive exceptional service that Plaintiff's customers have come to expect.

66. By causing consumers to believe they were purchasing Plaintiff's services and/or creating a situation in which consumers could reasonably believe they were purchasing Plaintiff's services, Defendants deceived the New York consumer public and caused or could have caused New York consumers to purchase Defendants' services under false pretenses.

67. Defendants further deceived consumer public by making certain comparative savings claims for airfares posted to their websites that were misleading and grossly exaggerated and/or did not actually offer saving to the consumers; announced limited-time price reductions when the rates were available on the ongoing basis, and made other unsupported claims.

68. For example, Defendants made statements like “Save up to 65% at CheapOair”, “40% to 65% discount on airfare,” without disclosing the benchmark prices and their source to consumers.

69. Upon information and belief, during a recent review by National Advertising Division ("NAD"), Defendants disclosed that the advertisements of discounts were based on a comparison to "Y" class unrestricted international fares. NAD noted in its decision that Y class fares are among the most expensive fares available, and comprise only nine percent of all tickets sold in the U.S.

70. Upon information and belief, NAD recently recommended that Defendants modify the "up to" savings claims in Google advertisements to avoid conveying the unsupported message that the basis of comparison is to competitors' discounted fares and clearly disclose that the basis of the savings claim is a comparison to the applicable classes of domestic and international unrestricted fully refundable published fares.

71. Defendants also made statements such as "CheapOair saves you time and guarantees the best rate," implying that they offered the best and lowest rates, leaving no reason for consumers to comparison shop for better rates. Upon information and belief, NAD recently recommended that Defendants more clearly disclose in immediate proximity to its "best price guarantee" the material limitation that consumers have four hours in which to find a lower fare.

72. Upon information and belief, NAD has made other recommendations to Defendants with respect to their advertising practices that cause and/or may cause consumer confusion.

73. Upon information and belief, Defendants did not follow NAD's recommendations, in whole or in part, and to this day continue to advertise misleading savings and discounts that do not offer actual savings to consumers and are therefore materially misleading. This false advertising caused or could have caused injury to New York consumers.

COUNT I

VIOLATION OF THE LANHAM ACT, 15 U.S.C. §1114

74. Plaintiff realleges and incorporates by reference the allegations contained in paragraph 1-73 of this Complaint, as though fully stated herein.

75. Defendants have violated Section 1114 by purchasing LBF's Marks as advertising keywords as means of advertising and selling Defendants' goods and services.

76. Defendants' use of LBF's Marks constitutes a use in commerce in connection with sale, offering for sale, distribution and advertising of Defendants' goods and services that are substantially similar to the goods and services offered by Plaintiff.

77. Defendants have taken these actions in order to create initial interest confusion by making it appear that the keyword advertisement and links will direct the consumer to a website owned or operated by or affiliated with Plaintiff, as well as to create confusion in the public mind as to the source of Defendants' services and the affiliation of Defendants' services with Plaintiff's services.

78. Defendants' purchase of LBF's Marks as advertising keywords as described extensively in the Complaint cause and/or are likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendants' travel services and falsely and deceptively represents Defendants' travel services as being affiliated with, sponsored by, authorized by, or provided by Plaintiff, in violation of the Lanham Act, 15 U.S.C. § 1114(1).

79. Upon information and belief, Defendants' use of plaintiff's marks causes at least some consumers actively seeking to find and do business with LBF Travel to clink on one or more sponsored links linking to the webpages of LBF Travel's competitors, either by mistake, or through confusion or because they are deceived into believing such sponsored links are related to LBF Travel.

80. Upon information and belief, Defendants' use of LBF's Marks causes at least some initial confusion among Internet users who see Defendants' sponsored links in response to a search the Internet user conducted looking for LBF Travel.

81. Upon information and belief, there is an expectation among Internet users who conduct searches on Internet search engines that the results listed, including the sponsored links, will be related to the search term, especially with regard to sponsored links that appear immediately above the search results, and are designed to look similar to such search results.

82. Upon information and belief, some Internet users who search for LBF's Marks on search engines by inputting the words "TRAVELATION" or "SMARTFARES", thereafter click on Defendants' sponsored links by mistake, or out of confusion or because they are deceived into believing it is related to the search terms "TRAVELATION" or "SMARTFARES", and thereafter do not continue their search for LBF's Marks either because they do business with Defendants, or out of discouragement, or because they are diverted and distracted from doing so.

83. Upon information and belief, after being diverted from their search for LBF's Marks, some Internet users lose the initial "momentum" generated by the goodwill associated with LBF's Marks, or are otherwise presented with purchasing barriers associated with making a choice between competing providers of services, which causes LBF Travel to lose one of the kew benefits of LBF's Marks.

84. Defendants committed their wrongful actions with the intent to mislead and misdirect consumers. Defendants' wrongful conduct has deprived, and will continue to deprive, Plaintiff of opportunities for controlling and expanding its goodwill.

85. This is an exceptional case and Plaintiff is entitled to recover reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

86. Plaintiff is being damaged and will continue to be damaged by this conduct and is without an adequate remedy at law to compensate it for Defendants' wrongful acts and therefore is entitled injunctive relief.

COUNT II

VIOLATION OF THE LANHAM ACT, 15 U.S.C. §1125(a)

87. Plaintiff realleges and incorporate by reference the allegations contained in paragraphs 1-86 of this Complaint, as though fully stated herein.

88. Section 1125(a)(1)(A) of the Lanham Act provides in pertinent part:

> (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word., term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which-
>
> . . .
>
> (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation., connection or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services or commercial activities by another person....

89. Defendants' purchase of LBF's Marks as advertising keyword as described extensively in this Complaint falsely suggests that they are associated with Plaintiff, in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

90. Defendants' unauthorized uses of LBF's Marks and close variations thereof constitutes a false designation of origin and a false or misleading description and representation of fact that is likely to cause initial interest confusion, actual confusion and mistake, and to deceive the public as to the affiliation, connection or association of Defendants with Plaintiff and as to the origin, sponsorship, or approval of Defendants' products and services by Plaintiff, all in violation of the Lanham Act, 15 U.S.C. § 1125(a).

91. Defendants' unauthorized uses of LBF's Marks threaten to impair the distinctiveness of LBF's Marks, thereby diluting them, and to tarnish them by association with Defendant's services.

92. This is an exceptional case and Plaintiff's are entitled to recover reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

93. Defendants' wrongful acts are causing damage to Plaintiff and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief.

COUNT III

STATE UNFAIR COMPETITION

94. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 – 93 of this Complaint, as though such allegations were set forth at length.

95. Defendants have violated New York law on unfair competition by attempting, in bad faith, to palm off their goods as Plaintiff's goods.

96. Defendants acted in bad faith because they knowingly and willfully engaged, and continue to engage, in the same conduct that they claim LBF Travel is guilty of, as alleged in their Complaint in the matter captioned *Fareportal, Inc. and WK Travel, Inc. v. LBF Travel, Inc. and Globester LLC* (S.D.N.Y., Docket No. 13-CV-2412).

97. Defendants have purchased LBF's Marks as advertising Keywords and willfully and without authorization used LBF's Marks and close variations thereof in online advertising directed to the market generally in order to make their own competing services appear connected with Plaintiff's services and thereby misappropriate Plaintiff's good and will and customers.

98. Defendants' services compete with Plaintiff's services for market share. Defendants' actions are deceptive and unfair and have caused, and are likely to cause in the

future, a public injury and a detrimental effect on consumers as to the origin of Defendants' products and services; are likely to cause confusion, mistake or deception as to the source, sponsorship, or approval of Defendants' travel services; and constitute "palming off" in violation of the New York common law on unfair competition.

99. Defendants' wrongful acts are causing damage to Plaintiff's good will, reputation, and business and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief.

COUNT IV

STATE TRADEMARK AND TRADE NAME INFRINGEMENT – VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 360-1

100. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-99 of this Complaint, as though such allegations were set forth at length.

101. NY GBL § 360-1 states:

> Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark or trade name shall be a ground for injunctive relief in cases of infringement of a mark registered or not registered or in cases of unfair competition, notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

102. Plaintiff is entitled to protection under NY GBL § 360-1 because it possesses strong marks and trade names, including SMARTFARES and TRAVELATION, which each have a distinctive quality and/or have acquired secondary meaning such that they have become associated in the public's mind with LBF Travel's services as distinguished from the services of competitors.

103. Defendants have violated NY GBL § 360-1 by their unauthorized, willful use of LBF's Marks, trade names, and key parts thereof by purchasing LBF's Marks as advertising keywords, all of which creates a likelihood of dilution by: (i) blurring in that the strength of their

association with Plaintiff is diminished by Defendants' unauthorized use thereof; and/or (ii) tarnishment by association with Defendants' services.

104. The unauthorized uses of LBF's Marks by Defendants provide Defendants with an unfair commercial and financial benefit and deprive Plaintiff of the full value of the good will and reputation it has invested millions of dollars in developing.

105. Defendants' wrongful acts are causing damage to Plaintiff and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief.

COUNT V

STATE TRADE NAME INFRINGEMENT – VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 133

106. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-105 of this Complaint, as though such allegations were set forth at length.

107. NY GBL § 133 prohibits any person or entity "with intent to deceive or mislead the public" from using all or part of any "corporate, assumed or trade name" for advertising purposes in such a manner as may "deceive or mislead the public" as to the identity of the person or entity or its connection with the person or firm that rightfully owns or uses the "corporate, assumed or trade name."

108. Plaintiff is entitled to protection under NY GBL § 133 because it possesses strong marks and trade names, including SMARTFARES and TRAVELATION which each have a distinctive quality and/or have acquired secondary meaning such that they have become associated in the public's mind with LBF Travel's services as distinguished from the services of competitors.

109. Defendants have violated NY GBL § 133 by intentionally purchasing LBF's Marks as advertising keywords. Defendants have taken these actions in order to create confusion and to deceive the public as to the affiliation, connection, or association of Defendants with Plaintiff and as to the origin, sponsorship, or approval of Defendants' products and services by Plaintiff, all in violation of §133 of the NY GBL.

110. These unauthorized uses of Plaintiff's trade names by Defendants provide Defendants with an unfair commercial and financial benefit and deprive Plaintiff of the full value of the good will and reputation it has invested millions of dollars in developing.

111. Defendants' wrongful acts are causing damage to Plaintiff and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief.

COUNT VI

DECEPTIVE ACTS AND PRACTICES – VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

112. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-111 of this Complaint, as though such allegations were set forth at length.

113. NY GBL § 349 states in pertinent part:

> (a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.
>
> . . .
>
> (h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

114. Defendants have violated NY GBL § 349 by willfully using LBF's Marks, trade names, and close variations thereof without Plaintiff's consent and advertising misleading sales, promotions and deals to the New York consumer public. These actions have caused injury to Plaintiff as well as to the New York consumer public.

115. Specifically, Defendants have used Plaintiff's goodwill to misdirect customers toward its own alternative services that are both inferior and unscrupulous, thereby causing injury to the consuming public.

116. For example, Defendants advertise nonexistent deals and misleading prices. Defendants have engaged in false advertising and other consumer protection violations, by advertising misleading percentage-off sales without disclosure of basis for comparison, advertising limited-time "sales" when such savings were in fact available on an ongoing basis, and otherwise creating an impression for consumers that Defendants offer significantly better prices, and encouraging consumers to not comparison-shop. Such activities have caused harm to the consumer public in general, as consumers have been misled as to the cost/value of the travel services provided by Defendants.

117. Defendants further deceived consumer public by making certain comparative savings claims for airfares posted to their websites that were misleading and grossly exaggerated and/or did not actually offer saving to the consumers; announced limited-time price reductions when the rates were available on the ongoing basis, and made other unsupported claims.

118. For example, Defendants made statements like "Save up to 65% at CheapOair", "40% to 65% discount on airfare," without disclosing the benchmark prices and their source to consumers.

119. Upon information and belief, during a recent review by National Advertising Division ("NAD"), Defendants disclosed that the advertisements of discounts were based on a comparison to "Y" class unrestricted international fares. NAD noted in its decision that Y class fares are among the most expensive fares available, and comprise only nine percent of all tickets sold in the U.S.

120. Upon information and belief, NAD recently recommended that Defendants modify the "up to" savings claims in Google advertisements to avoid conveying the unsupported message that the basis of comparison is to competitors' discounted fares and clearly disclose that the basis of the savings claim is a comparison to the applicable classes of domestic and international unrestricted fully refundable published fares.

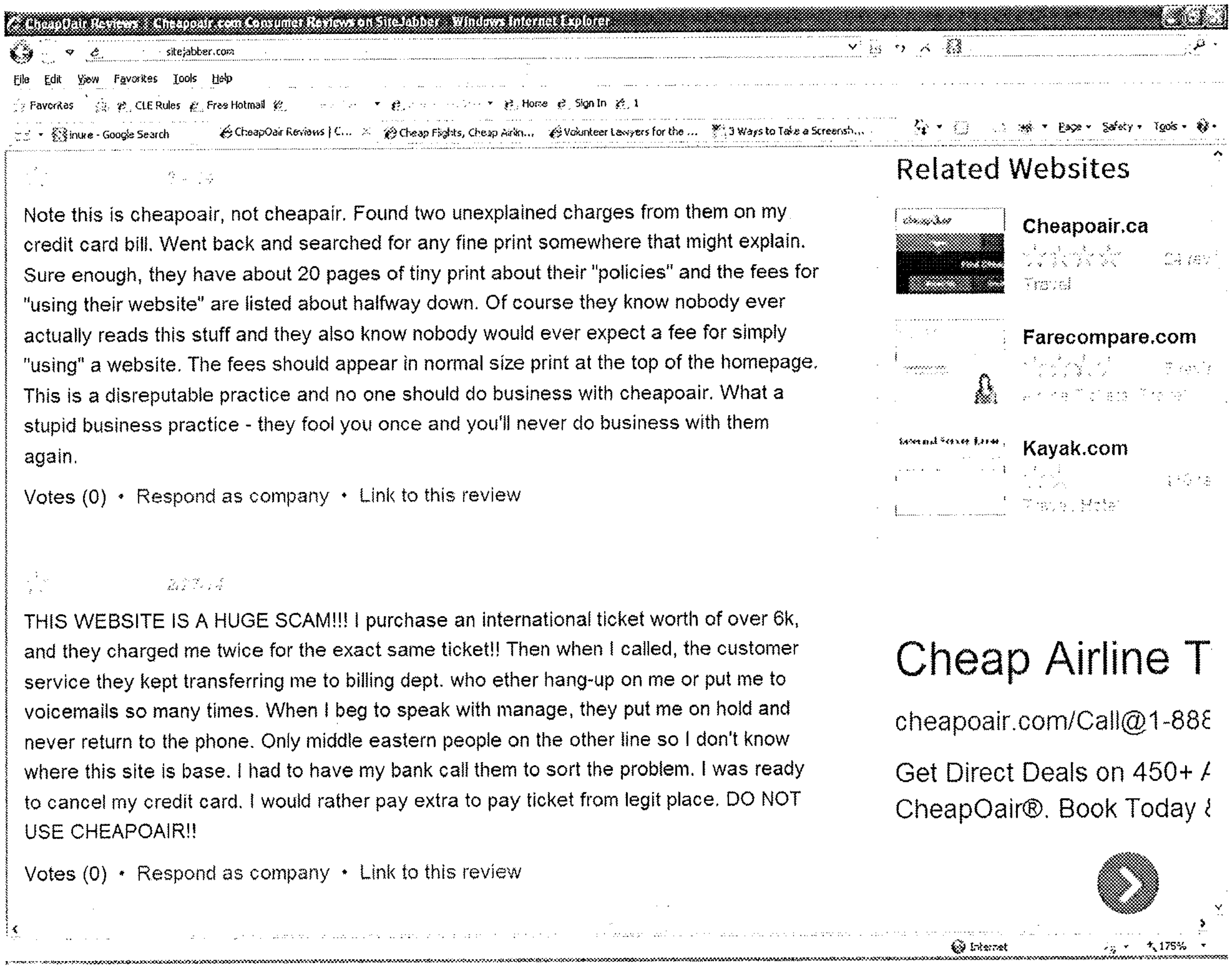
121. Defendants also made statements such as "CheapOair saves you time and guarantees the best rate," implying that they offered the best and lowest rates, leaving no reason for consumers to comparison shop for better rates. Upon information and belief, NAD recently recommended that Defendants more clearly disclose in immediate proximity to its "best price guarantee" the material limitation that consumers have four hours in which to find a lower fare.

122. Upon information and belief, NAD has made other recommendations to Defendants with respect to their advertising practices that cause and/or may cause consumer confusion.

123. Upon information and belief, Defendants did not follow NAD's recommendations in whole or in part, and to this day continue to advertise misleading savings and discounts that do not offer actual savings to consumers and are therefore materially misleading. This false advertising has caused injury to New York consumers.

124. In fact, consumer complaints regarding Defendants' services evidence this injury to the consuming public.

125. For example, the following reviews were posted on the website www.sitejabber.com in February and March 2014:



CheapOair Reviews | Cheapoair.com Consumer Reviews on SiteJabber - Windows Internet Explorer

Related Websites

Cheapoair.ca

Farecompare.com

Kayak.com

Note this is cheapoair, not cheapair. Found two unexplained charges from them on my credit card bill. Went back and searched for any fine print somewhere that might explain. Sure enough, they have about 20 pages of tiny print about their "policies" and the fees for "using their website" are listed about halfway down. Of course they know nobody ever actually reads this stuff and they also know nobody would ever expect a fee for simply "using" a website. The fees should appear in normal size print at the top of the homepage. This is a disreputable practice and no one should do business with cheapoair. What a stupid business practice - they fool you once and you'll never do business with them again.

Votes (0) • Respond as company • Link to this review

THIS WEBSITE IS A HUGE SCAM!!! I purchase an international ticket worth of over 6k, and they charged me twice for the exact same ticket!! Then when I called, the customer service they kept transferring me to billing dept. who ether hang-up on me or put me to voicemails so many times. When I beg to speak with manage, they put me on hold and never return to the phone. Only middle eastern people on the other line so I don't know where this site is base. I had to have my bank call them to sort the problem. I was ready to cancel my credit card. I would rather pay extra to pay ticket from legit place. DO NOT USE CHEAPOAIR!!

Votes (0) • Respond as company • Link to this review

Cheap Airline T

cheapoair.com/Call@1-888

Get Direct Deals on 450+ A

CheapOair®. Book Today 8

126. The website http://www.scambook.com/company/view/1830/CheapoAir states that the page www.cheapoair.com has accumulated 43 customer complaints.

127. Moreover, the Better Business Bureau reported on their website http://www.bbb.org/new-york-city/business-reviews/travel-agencies-and-bureaus/fareportal-inc-in-new-york-ny-89212/ as follows:

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> Consumers have issued a range of complaints with the BBB against CheapOAir.com. Consumers report that upon finding the tickets they want to purchase and entering their billing information, they are informed that the flight is not available. According to complaints, CheapOAir.com then recommends more expensive flights. Consumers also allege difficulty in obtaining refunds. Some consumers who purchase flights on CheapOAir.com report that either all or a portion of their flights have not been confirmed with the airline resulting in flight cancellations. These consumers then have to pay a second time for their plane reservations.

128. Defendants' wrongful acts are causing damage to Plaintiff and New York consumers, and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief. Further, as authorized by § 349(h) of the New York General Business Law, Plaintiff is entitled to recover reasonable attorneys' fees and costs.

COUNT VII

FALSE ADVERTISING – VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 350

129. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-128 of this Complaint, as though such allegations were set forth at length.

130. NY GBL § 350 states: "False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful."

131. Defendants have violated NY GBL § 350 by willfully using LBF's Marks, trade names, and key parts thereof without Plaintiff's consent, and advertising misleading sales, promotions and deals to the New York consumer public. These actions have caused injury to Plaintiff as well as to the New York consumer public.

132. As detailed at length *supra*, Defendants have also engaged in various acts of deceptive advertising through misleading percentage-off sales without disclosure of the basis for comparison, advertising limited-time "sales" when such savings were in fact available on an

ongoing basis, and otherwise creating an impression for consumers that Defendants offer significantly better prices, and encouraging consumers to not comparison-shop. Such activities have caused harm to the consumer public in general, as consumers have been misled as to the cost/value of the travel services provided by Defendants.

133. Defendants' aforesaid acts provide an unfair commercial and financial benefit to Defendants, and have caused or threaten to cause injury to New York consumers.

134. Defendants' wrongful acts are also causing damage to Plaintiff and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief.

COUNT VIII

STATE UNFAIR BUSINESS PRACTICE

135. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-134 of this Complaint, as though such allegations were set forth at length.

136. Defendants have engaged in unfair business practice in violation of New York State common law by making unauthorized use of LBF's Marks, trade names, and close variations thereof, and their trade dress.

137. Defendants' unauthorized, willful use of LBF's Marks, trade names, and close variations thereof, are likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendants' travel services and falsely and deceptively represent Defendants' travel services as being affiliated with, sponsored by, authorized by, or provided by, Plaintiff, and create consumer confusion and cause customers that would otherwise purchase services from Plaintiff to obtain them through Defendants instead.

138. Defendants' aforesaid acts provide an unfair commercial and financial benefit to Defendants, threaten the good will and reputation of Plaintiff, and deprive Plaintiff of the full

value of the commercial and proprietary information that it has invested millions of dollars developing.

139. Defendants' wrongful acts are causing damage to Plaintiff and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief.

COUNT IX

UNJUST ENRICHMENT

140. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-139 of this Complaint, as though such allegations were set forth at length.

141. At all times relevant hereto, Defendants acted willfully and in bad faith, with full knowledge and understanding that they are engaging in the same conduct that they accused LBF Travel of in the matter captioned *Fareportal, Inc. and WK Travel, Inc. v. LBF Travel, Inc. and Globester LLC* (S.D.N.Y., Docket No. 13-CV-2412).

142. Defendants' wrongful actions, as described above, provide an unfair commercial and financial benefit to Defendants without compensation to Plaintiff, who spent millions of dollars developing LBF's Marks and their proprietary and confidential commercial information and trade secrets, threaten the good will and reputation of Plaintiff, and deprive Plaintiff of the full value of the commercial and proprietary information that they have invested millions of dollars in developing.

143. Upon information and belief, given that Plaintiff and Defendants are direct competitors in the market of discount online travel services, Defendants' infringements caused sales to be diverted to Defendants when such sales would otherwise have gone to LBF Travel.

144. Defendants' wrongful acts are causing damage to Plaintiff and Plaintiff is without an adequate remedy at law to compensate it for Defendants' wrongful activity and therefore is entitled to injunctive relief.

PRAYER FOR RELIEF

A That this Court grant preliminary and permanent injunctive relief, pursuant to 15 U.S.C. § 1116, against Defendants and their respective officers, partners, agents, servants, employees, sales representatives, distributors, partners, subsidiaries, related companies, heirs, predecessors, successors, assigns, attorneys, and all others in active concert or participation with any of them enjoining them from:

i. Using, whether directly or indirectly, SMARTFARES, TRAVELATION, or any other mark or word similar to any of LBF's Marks, including any key part thereof, in a manner that is likely to cause confusion or mistake, or to deceive, in connection with online travel services, including, without limitation, in any advertising or SEM campaign;

ii. Engaging in any other act or thing likely to confuse, mislead, or deceive others into believing that Defendants, or any of their respective products or services emanate from Plaintiff, or are connected with, affiliated with, sponsored by, or approved by Plaintiff or any of its family of brands;

iii. Aiding or assisting any person in engaging in any of the acts prohibited by subsections (i) through (ii) above;

B For an order directing each Defendant to file with this Court and serve on Plaintiff within three (3) days after service of an injunction a written report under oath setting forth in detail the manner and form in which each Defendant has complied with the injunction pursuant to 15 U.S.C. §1116;

C For an order requiring Defendants and all those in privity with them to surrender for destruction all materials incorporating or reproducing any of LBF's Marks or any key part thereof in accordance with 15 U.S.C. 1118, and the equitable power of this Court to enforce the common law of New York;

D For an accounting of the gains and profits realized by each of Defendants from their respective wrongful acts of infringement, unfair competition, and/or deceptive acts and false advertising;

E For an order requiring Defendants to pay Plaintiff:

i. statutory damages;

ii. punitive damages;

iii. treble damages;

iv. actual damages;

v. all profits wrongfully derived by Defendants from the use of LBF's marks or any close variations thereof;

vi. Plaintiff's costs and expenses, including without limitation reasonable attorneys' fees; and

vii. prejudgment interest at the maximum legal rate;

F That this case be deemed "exceptional" within the meaning of the Lanham Act, 15 U.S.C. § 1117; and,

G For such other and further relief as this Court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand and request a trial by jury on all issues so triable.

Dated: New York, New York
January 16, 2015

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: ______________________________

Jura C. Zibas (JZ 8970)
Jana A. Slavina (JS 4970)
Attorneys for LBF Travel, Inc.
150 East 42nd Street
New York, New York 10017-5639
(212) 490-3000
Jura.Zibas@wilsonelser.com
Jana.Slavina@wilsonelser.com
File No.: 15263.00001

EXHIBIT A

WILSON ELSER
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

October 28, 2013

Jura C. Zibas
212.915.5756 (direct)
Jura.Zibas@wilsonelser.com

VIA EMAIL
Norman Bluth, Esq.
McBreen & Kopko
500 North Broadway
Suite 129
Jericho, New York 11753

Re: Fareportal et al. v LBF Travel Inc., et al.
File No.: 14787.00001

Dear Norm:

This letter is to advise you that your clients are continuing to infringe on the trademarks of LBF Travel, Inc. ("LBF") including directly targeting LBF's keywords and trademarks in google, yahoo and Microsoft search engines.

According to the reports from "The Search Monitor," since the time your clients discussed settlement with LBF and LBF provided search terms as part of our good faith settlement negotiations, it appears plaintiffs have utilized the information learned during settlement discussions to intentionally, systematically and deliberately bid on the LBF keywords and trademarks.

We have reports from independent companies to support plaitniffs' ongoing conduct. Please advise your clients to cease and desist from inappropriately using information obtained during settlement discussions to interfere with LBF's business.

Very truly yours,

Wilson Elser Moskowitz Edelman & Dicker LLP

Jura C. Zibas

Jura C. Zibas

cc: Peter Sullivan, Esq.
Betty Tufariello, Esq.

150 East 42nd Street • New York, NY 10017 • p 212.490.3000 • f 212.490.3038

Albany • Baltimore • Boston • Chicago • Connecticut • Dallas • Denver • Garden City • Houston • Las Vegas • London • Los Angeles • Louisville • McLean
Miami • Milwaukee • New Jersey • New York • Orlando • Philadelphia • San Diego • San Francisco • Washington, DC • West Palm Beach • White Plains
Affiliates: Berlin • Cologne • Frankfurt • Munich • Paris

wilsonelser.com

3051113v.1

EXHIBIT B

Slavina, Jana

From: Zibas, Jura C.
Sent: Wednesday, October 30, 2013 6:26 PM
To: Slavina, Jana
Subject: Fw: Fareportal v. LBF
Attachments: Fareportal v. LBF.PDF

From: Sullivan, Peter [mailto:sullivan@HughesHubbard.COM]
Sent: Wednesday, October 30, 2013 06:23 PM
To: Zibas, Jura C.
Cc: NBluth@mklawnyc.com <NBluth@mklawnyc.com>
Subject: Fareportal v. LBF

Jura,

Please see the attached letter.

Hughes Hubbard

Peter A. Sullivan | *Partner*
Hughes Hubbard & Reed LLP | One Battery Park Plaza | New York, NY 10004-1482
Office 212-837-6709 | Cell 646-415-4116 | Fax 212-299-6709
sullivan@hugheshubbard.com

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****

Hughes
Hubbard

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Direct Dial: 212-837-6709
sullivan@hugheshubbard.com

October 30, 2013

VIA EMAIL AND FIRST CLASS MAIL

Jura C, Zibas, Esq.
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150 E 42nd Street
New York, NY 10017

Re: Fareportal et al. v. LBF et al.

Dear Jura:

I write in response to your letter of October 28, 2013. We confirmed with our client that it is not engaging in any infringing activity with respect to LBF's trademarks.

Very truly yours,

EXHIBIT C

Int. Cls.: 35, 39 and 43

Prior U.S. Cls.: 100, 101, 102 and 105

Reg. No. 3,576,166

United States Patent and Trademark Office

Registered Feb. 17, 2009

SERVICE MARK
PRINCIPAL REGISTER

CHEAPOAIR

FAREPORTAL, INC. (NEW YORK CORPORATION)
213 WEST 35TH STREET, STE 1201
NEW YORK, NY 10001

FOR: ADVERTISING SERVICES FOR TRAVEL SERVICES, NAMELY, PROMOTING THE GOODS, SERVICES, BRAND IDENTITY AND COMMERCIAL INFORMATION AND NEWS OF TRAVEL AND TRAVEL RELATED COMPANIES ON THE INTERNET, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-1-2005; IN COMMERCE 7-1-2005.

FOR: PROVIDING AN ON-LINE COMPUTER DATABASE IN THE FIELD OF TRAVEL INFORMATION SERVICES; TRAVEL AND TOUR INFORMATION SERVICE; TRAVEL AND TOUR TICKET RESERVATION SERVICE; TRAVEL SERVICES, NAMELY, PROVIDING FARE AND RATE INFORMATION FOR TRANSPORTATION BOOKINGS AND RESERVATIONS FOR FLIGHTS, CAR RENTALS, CRUISES, RAIL TRAVEL, AND TOURS VIA COMPUTER; PROVIDING TRAVEL INFORMATION AND NEWS VIA COMPUTER; PROVIDING LINKS TO WEBSITES OF OTHERS FEATURING TRAVEL, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 7-1-2005; IN COMMERCE 7-1-2005.

FOR: PROVIDING TRAVEL LODGING INFORMATION SERVICES AND TRAVEL LODGING BOOKING AGENCY SERVICES FOR TRAVELERS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 7-1-2005; IN COMMERCE 7-1-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-567,343, FILED 9-11-2008.

SUNG IN, EXAMINING ATTORNEY

EXHIBIT D

Int. Cls.: 35, 39 and 43

Prior U.S. Cls.: 100, 101, 102 and 105

Reg. No. 3,672,700
Registered Aug. 25, 2009

United States Patent and Trademark Office

SERVICE MARK
PRINCIPAL REGISTER

CheapOstay

FAREPORTAL, INC (NEW YORK CORPORATION)
STE 1201
213 WEST 35TH STREET
NEW YORK, NY 10001

FOR: ADVERTISING AND MARKETING SERVICES, NAMELY, PROMOTING THE GOODS AND SERVICES OF OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-3-2009; IN COMMERCE 4-3-2009.

FOR: PROVIDING AN ON-LINE COMPUTER DATABASE IN THE FIELD OF TRAVEL INFORMATION SERVICES; PROVIDING LINKS TO WEB SITES OF OTHERS FEATURING TRAVEL; PROVISION OF TRAVEL INFORMATION; TRAVEL AND TOUR INFORMATION SERVICE; TRAVEL AND TOUR TICKET RESERVATION SERVICE, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 2-27-2009; IN COMMERCE 2-27-2009.

FOR: MAKING HOTEL RESERVATIONS FOR OTHERS; PROVIDING TRAVEL LODGING INFORMATION SERVICES AND TRAVEL LODGING BOOKING AGENCY SERVICES FOR TRAVELERS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 2-27-2009; IN COMMERCE 2-27-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,554,213, 3,576,166, AND 3,580,258.

SER. NO. 77-668,346, FILED 2-11-2009.

IRA J. GOODSAID, EXAMINING ATTORNEY

EXHIBIT E

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

Reg. No. 3,580,258

United States Patent and Trademark Office

Registered Feb. 24, 2009

SERVICE MARK
PRINCIPAL REGISTER

CHEAPOAIR.COM THE ONLY WAY TO GO!!

FAREPORTAL, INC. (NEW YORK CORPORATION)
SUITE 1201
213 WEST 35TH STREET
NEW YORK, NY 10016

FOR: PROVIDING LINKS TO WEB SITES OF OTHERS FEATURING TRAVEL; TRAVEL AND TOUR INFORMATION SERVICE; TRAVEL AND TOUR TICKET RESERVATION SERVICE, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 10-15-2005; IN COMMERCE 10-15-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-527,426, FILED 7-21-2008.

SUNG IN, EXAMINING ATTORNEY

EXHIBIT F

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

Reg. No. 3,553,213

United States Patent and Trademark Office

Registered Dec. 30, 2008

SERVICE MARK
PRINCIPAL REGISTER

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FAREPORTAL, INC. (NEW YORK CORPORATION)
SUITE 1201
213 WEST 35TH STREET
NEW YORK, NY 10001

FOR: PROVIDING LINKS TO WEB SITES OF OTHERS FEATURING TRAVEL; TRAVEL AND TOUR INFORMATION SERVICE; TRAVEL AND TOUR TICKET RESERVATION SERVICE, IN CLASS 39 (U.S. CLS. 100 AND 105).

FIRST USE 10-15-2005; IN COMMERCE 10-15-2005.

THE COLOR(S) GREY AND RED IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE LETTERS "CHEAP" IN GREY LOWERCASE LETTERING WITH A RED CURVED UNDERLINE, THE LETTER "O" IN RED CAPITAL LETTERING, THE LETTERS "AIR" IN GREY LOWERCASE LETTERING, THE LETTERS ".COM" IN RED LOWERCASE LETTERING, THE WORDS "THE ONLY WAY TO" IN GREY LOWERCASE CURSIVE LETTERING, AND THE WORD "GO!!" IN RED LOWERCASE CURSIVE LETTERING.

SER. NO. 77-422,393, FILED 3-14-2008.

ARETHA SOMERVILLE, EXAMINING ATTORNEY